

TITLE 19. ZONING

ARTICLE 6. DISCRETIONARY PERMITS AND PROCEDURES

**Chapter 19.94. TREE PRESERVATION**

**19.94.010. Findings.**

The city council finds that:

- (a) The city of Sunnyvale has a great diversity of trees that are of economic value to the city and make it a desirable place for residents, business owners and visitors;
- (b) The appearance of Sunnyvale contributes to the economic prosperity of the city;
- (c) Trees contribute to the scenic beauty of Sunnyvale;
- (d) Trees help to naturally control flooding and erosion, moderate noise pollution, climate, dust and other airborne pollutants, remove carbon dioxide from the atmosphere and produce oxygen, and shelter and feed birds and other wildlife;
- (e) The development and redevelopment of the city often necessitates the removal of trees, thereby contributing to their depletion; and
- (f) It is necessary to protect and manage these valuable assets and their habitat to protect the health, safety and welfare of the citizens of Sunnyvale.

**19.94.020. Purpose.**

The purpose of this chapter is to regulate the protection, installation, removal and long term management of significantly sized trees on private property within the city and city owned golf courses and parks; encourage the proper protection and maintenance of significantly sized trees which are located on such property; establish a review and permit procedure to assure the correct planting, maintenance, protection and removal of significant trees on such property; and establish penalties for violation of its provisions. This chapter is not intended to regulate trees on public rights-of-way, which are regulated pursuant to Chapter 13.16. The provisions of this chapter identify and prescribe specific procedures and requirements for the filing, processing and consideration of the removal and preservation of trees. These provisions shall be used in conjunction with the general requirements and procedures identified in Chapter 19.98 including requirements and procedures for applications, fees, notification, appeals, conditions of approval, modifications, expiration, extensions, revocation and infractions, as applicable.

**19.94.030. Definitions.\***

For the purpose of this chapter the following definitions apply:

- (1) "Damage" means any intentional action or gross negligence which causes injury, death or disfigurement of a tree. Actions include, but are not limited to, cutting, girdling, poisoning, overwatering, unauthorized relocation or transportation of a tree or trenching, excavating, altering the grade or paving within the dripline of a tree.
- (2) "Dripline" means the outermost line of the tree's canopy projected straight down to the ground surface. As depicted in a plan view, the dripline appears as an irregularly shaped circle.
- (3) "Protected tree" means a tree of significant size.

(4) “Significant size” means a tree thirty-eight inches or greater in circumference measured four and one-half feet above ground for single-trunk trees. For multi-trunk trees “significant size” means a tree which has at least one trunk with a circumference thirty-eight inches or greater measured four and one-half feet above ground level, or in which the measurements of the circumferences of each of the multi-trunks, when measured four and one-half feet above the ground level, added together equal an overall circumference one hundred thirteen inches or greater.

(5) “Tree” means any woody plant which has a trunk thirteen inches or more in circumference at four and one-half feet above ground level.

(6) “Tree Removal” means the physical removal of a tree or causing the death of a tree through damaging, poisoning, or other direct or indirect action, including excessive trimming, pruning, or mutilation that sacrifices the health, destroys, or diminishes the aesthetic quality, or diminishes the life expectancy of the tree(s).

\* **Editor’s Note:** The definitions in Section 19.94.030 also appear in Ch. 19.12.

#### **19.94.040. Actions prohibited.**

- (a) It is unlawful to damage or kill any protected tree.
- (b) It is unlawful to remove any protected tree from private property in any zoning district or from any city owned golf course or park, without a protected tree removal permit.

#### **19.94.050. Permits required.**

(a) In order to remove any protected tree from private property in any zoning district, or from any city owned golf course or park, it is necessary to obtain a protected tree removal permit from the department of community development. Any tree which has been designated as a heritage landmark, pursuant to the provisions of Chapter 19.96, shall not be removed without obtaining a tree removal permit in addition to a landmark alteration permit in accord with Chapter 19.96.

(b) Tree removal permits shall be filed at least ~~seven~~ ten working days prior to the proposed date of tree removal.

(c) Removal of orchard trees as part of farming operations or upon order of the county agricultural inspector are exempt from the provisions of this chapter.

#### **19.94.060. Standards and criteria.**

One or more of the following standards must be met before a protected tree removal permit may be approved:

- (a) The tree is diseased or damaged;
- (b) The tree represents a potential hazard to people, structures or other trees;
- (c) The tree is in basically sound condition, but restricts the owner’s ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property owner’s use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection:

(1) The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;

(2) The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;

(3) The approximate age of the tree relative to its average life span;

(4) The potential effect of removal on soil erosion and stability where the tree is located;

(5) Current and future visual screening potential;

(6) The property has become over landscaped with trees so that they are too numerous, crowded, and unreasonably restricts the property owner's ability to use their land. In this event, selective removal can be approved in conjunction with acceptable arborist's practices;

(7) The tree has outgrown its useful landscape value due to its inappropriate species, size, and location, relative to the existing structures on the property;

(8) Any other information the director of community development finds pertinent to the application.

#### **19.94.070. Display of permit.**

All permits issued for tree removal shall be so displayed as to be clearly visible from a public right-of-way.

#### **19.94.080. Replacement trees.**

(a) At the discretion of the director of community development, replacement trees may be required as a condition of issuance of a protected tree removal permit, or as a condition of any discretionary permit for development or redevelopment. The need for replacement trees shall be evaluated based on the following criteria:

(1) The number, species, size and location of existing trees on the site; and

(2) Good forestry practices such as, but not limited to, the number of healthy trees a given parcel of land will support.

(b) At the discretion of the director of community development, other mitigation measures may be required, where either it is not feasible to plant any replacement trees on the site, or where the replacement trees to be planted are deemed inadequate by the director to sufficiently mitigate the effects of the removal of the tree(s). Mitigation measures could include, but would not be limited to, paying for the planting of additional trees in parks or other public areas of the city.

#### **19.94.090. Requirements for replanting programs.**

The following items shall be included in replanting programs when protected trees must be removed:

(a) Minimum distances between trees and between trees and buildings shall be provided such that the health of the replacement trees shall be ensured;

(b) Replanting shall occur within a specified time period;

(c) Mixed species shall be used in large replantings whenever possible to reduce the likelihood of disease and infestations;

(d) Tree care procedures shall be included in all replanting plans and shall include, but not be limited to, the following items: mulching; straightening; new staking or restaking; fertilizing; and any other procedures deemed necessary by the city;

(e) Minimum size for the replacement of a protected tree shall be a California Association of Nurserymen's standard twenty-four inch box size tree. The director of community development shall have the authority to require larger or smaller replacement trees upon review of specific cases. Smaller trees may be approved if the applicant can document the long term advantages of using the smaller tree size.

#### **19.94.100. Relocation of trees.**

At the discretion of the director of community development, the tree(s) to be removed may be required to be relocated on or off the subject site. The need for relocation shall be evaluated based on the criteria found in Section 19.94.080 plus the ease with which the removed tree can be replanted.

#### **19.94.110. Requirements concerning protected trees during site development or modification.**

When site development or modification is occurring and a discretionary permit and a public hearing are required, the developer or owner shall meet the following requirements:

(a) Tree Survey. A tree survey conducted by an arborist who has been certified by the International Society of Arboriculture shall be submitted as part of the required application materials for all use, design or special development permits on developing or redeveloping property. The survey shall show the location, size, and species (both common and Latin names required) of all trees (protected and unprotected) on the site, and shall include a calculation of the value of each tree. A written letter shall be included when a protected tree(s) is proposed to be removed explaining why the tree(s) cannot be relocated or the design of the structures altered to maintain the trees.

(b) Plan Modifications.

(1) The approving body shall have the ability to require the reasonable alteration of a proposed building in order to retain protected trees.

(2) The approving body shall have the ability to require relocation (on or off site) of protected trees which the applicant proposes to remove.

(c) Replanting Plans. When protected trees must be removed, replanting plans shall be submitted as part of the landscaping plan for the proposed project. The replanting plan shall be subject to the requirements of Section 19.94.090, but actual number and sizes of replacement trees shall be reviewed on a case by case basis.

(d) Tree Protection Plan. The developer shall submit a tree protection plan which shall demonstrate how tree protection shall be provided during and after construction and shall include, where appropriate, a description of any of the protective measures set forth in Section 19.94.120.

(e) Tree Bonds. The approving body shall have the authority to require a developer to post a bond with the City for the value of any tree required to remain as a condition of permit approval during development activities on a site.

(1) The bond may be for a maximum period of five years.

(2) The value of the tree shall be determined by the director of community development.

(3) The bond will be released back to the developer if the tree remains in good health through the end of the bond period.

(4) In the event the tree dies or begins to decline in poor health, the bond will be used by the City to replace the aesthetic value of the tree that was lost.

(f) Soil Mitigation. The approving body shall have the authority to require underground soil or planting measures, such as structural soils, in any locations deemed appropriate for future or existing tree growth.

#### **19.94.120. Tree protection during construction.**

Protected trees designated for preservation shall be protected during construction of a project by use of the following methods:

(a) Protective fencing shall be installed no closer to the trunk than the dripline, and far enough from the trunk to protect the integrity of the tree. The fence shall be a minimum of four feet in height and shall be set securely in place. The fence shall be of a sturdy but open material (i.e., chain link) to allow visibility to the trunk for inspections and safety.

(b) The existing grade level around a tree shall normally be maintained out to the dripline of the tree. Alternate grade levels, as described in the tree protection plan, may be approved by the director of community development.

(c) Drain wells shall be installed whenever impervious surfaces will be placed over the root system of a tree (the root system generally extends to the outermost edges of the branches).

(d) Pruning that is necessary to accommodate a project feature, such as a building, road or walkway shall be reviewed and approved by the department of community development and the department of public works.

(e) New landscaping installed within the dripline of an existing tree shall be designed to reproduce a similar environment to that which existed prior to construction.

#### **19.94.130. Project review committee.**

All tree surveys, replanting plans and tree protection plans submitted with discretionary permit applications made pursuant to Title 19, shall be reviewed at a project review committee meeting at which the applicant shall be present. Discretionary permits shall not be issued until such time as the tree survey, replanting plan and tree protection plans are deemed complete and have been approved by the director of community development.

#### **19.94.140. On-site inspections.**

Appropriate city staff shall be authorized to conduct on-site inspections during construction to ensure that tree preservation procedures are being followed and replanting plans

implemented. Failure to abide by an approved plan or permit may result in a stop work order to be issued by the director of community development.

**19.94.150. Emergency waivers and exemptions.**

The provisions of this chapter are waived if compliance would hamper the rescue of life or property from immediate danger or the repair of utilities in the event of emergencies such as wind storms, ice storms or other natural disasters.

**19.94.160. Penalties for violation.**

(a) Any person, property owner, firm or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, shall be liable for a civil penalty assessed and recovered in a civil action brought by the city attorney.

(1b) In the event that the violation results in any substantial injury or damage to a protected tree, the civil penalty shall be not less than five thousand dollars nor more than twenty-five thousand dollars. In the event that the violation results in the destruction or improper removal of a protected tree, the civil penalty shall be not less than ten thousand dollars nor more than fifty thousand dollars. The appropriate penalty shall apply separately to each tree affected by the improper action.

(2e) In any civil action brought to seek such civil penalties, and/or to obtain injunctive relief for violation of any provision of this chapter, in which the city prevails, the court shall determine and impose reasonable expenses, including attorneys' fees incurred by the city in the investigation and prosecution of the action.

(d) ~~The remedies provided for in this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.~~

(b) The director of community development or his designee shall have the authority to require an administrative hearing for any violations of the provisions of this chapter, including but not limited to, illegal tree removal.

(1) The administrative hearing shall be set for a date that is not less than fifteen calendar days and not more than thirty calendar days from the date the "Notice of Violation" is served in accordance with section 1.08.100.

(2) The hearing officer may impose such fines, reasonable expenses and landscaping deemed necessary to replace the aesthetic value of the tree based on generally accepted arborist's practices.

(3) The hearing officer may consider any relevant evidence and the decision must be supported by the weight of the evidence. Strict rules of evidence shall not apply.

(4) The hearing officer shall issue a written decision within fifteen days of the hearing date. The hearing officer may continue the hearing and request additional information from City staff or the recipient of the "Notice of Violation" before issuing a written decision.

(5) If the hearing officer imposes a fine for a violation of this chapter and the fine has not been satisfied within ninety days or has not been appealed,

then the obligation shall become a lien against the real property on which the obligation occurred.

(6) The failure of any recipient of a "Notice of Violation" to appear at the administrative hearing shall constitute a waiver of any objections to the imposition of a fine or other appropriate remedy imposed by the hearing officer and constitutes a failure to exhaust administrative remedies.

(7) The decision of the hearing officer may be appealed to the Planning Commission within fifteen days of the date of service of the written decision. The decision of the Planning Commission shall be final.

(c) The remedies provided for in this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.